

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK SIMS,

No. C 08-01691 SBA (PR)

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT**

DR. MICHAEL SAYRE, et al.,

Defendants.

Before the Court is Plaintiff's request for leave to file an amended complaint.

A plaintiff may amend his complaint once as a matter of course at any time before a responsive pleading is served. See Fed. R. Civ. P. 15(a). Where a plaintiff seeks to amend after a responsive pleading has already been served, however, the decision whether to grant leave to amend is committed to the sound discretion of the trial court. Waits v. Weller, 653 F.2d 1288, 1290 (9th Cir. 1981). Federal Rule of Civil Procedure 15(a) is to be applied liberally in favor of amendments and, in general, leave shall be freely given when justice so requires. Janicki Logging Co. v. Mateer, 42 F.3d 561, 566 (9th Cir. 1994).

The Court notes that the defendants in this action have not been served at this time. Plaintiff may as a matter of course amend his complaint because a responsive pleading has not yet been served. See Fed. R. Civ. P. 15(a). Accordingly, Plaintiff's motion for leave to file an amended complaint is GRANTED.

The Clerk of the Court is directed to file Plaintiff's motion, which is labeled "Motion for Leave to File an Amended Complaint and Demand for Jury Trial," and docket the aforementioned document as Plaintiff's "First Amended Complaint." The Clerk is further directed to mark the First Amended Complaint as filed on October 14, 2008, the date it was received by the Court. The Court will review Plaintiff's First Amended Complaint in a separate written Order.

This Order terminates Docket no. 7.

IT IS SO ORDERED.

DATED: 5/12/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DERRICK SIMS,

5 Plaintiff,

6 v.

7 MICHAEL SAYRE et al,

8 Defendant.

Case Number: CV08-01691 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on May 14, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Derrick D. Sims J-20913
16 Pelican Bay State Prison
17 P.O. Box 7500
18 Crescent City, CA 95531

19 Dated: May 14, 2009

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk
22
23
24
25
26
27
28